

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1676 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

DHARTINAGAR CO OP HOUSING SOCIETY LTD (DADAR GROUP)

Versus

DEPUTY COLLECTOR

Appearance:

Kum. V.P.Shah, Senior Advocate, with Shri M.S.Rao, Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 20/04/96

ORAL JUDGEMENT

The order passed by the Deputy Collector at Dabhoi (respondent No.1 herein) on 23rd January 1996 under section 65 of the Bombay Tenancy and Agricultural Lands Act, 1948 (the Act for brief) is under challenge in

this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 ordered taking over of management of certain parcels of lands for a period of ten years on the ground that they remained fallow for more than two years. Its copy is at Annexure-A to this petition.

2. The grievance voiced by and on behalf of the petitioner is that no opportunity of hearing was given to it before passing the impugned order. It appears that the impugned order is passed against Dhartinagar Housing Complex and the petitioner is a Co-operative Society registered under the Gujarat Co-operative Societies Act, 1961. Learned Advocate Kum. Shah for the petitioner states that Dhartinagar Housing Complex is a partnership firm and that entity is different from the petitioner society. It thus becomes clear that no opportunity of hearing was given to the petitioner before passing the impugned order at Annexure-A to this petition. The impugned order can therefore be said to have been passed in contravention of the *audi alteram partem* rule enshrined in principles of natural justice. It cannot therefore be sustained in law.

3. In the result, this petition is accepted. The order passed by the Deputy Collector at Dabhoi at Annexure-A to this petition is quashed and set aside. It is however clarified that this judgment of mine shall not preclude respondent No.1 or any other competent authority to initiate appropriate action according to law obviously after service of Notice to the concerned petitioner. Rule is accordingly made absolute to the aforesaid with no order as to costs.

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